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ZULKIPLE MOHAMAD v. PP

FEDERAL COURT, PUTRAJAYA
ABDUL RAHMAN SEBLI FCJ
ZABARIAH MOHD YUSOF FCJ
HASNAH MOHAMMED HASHIM FCJ
B [CRIMINAL APPEAL NO: 05(M)-55-03-2018(J)]
29 NOVEMBER 2021

Abstract – *The deliberate act of the accused in hitting the deceased on the head with a baseball bat, thereby causing her death, although done without the intention to cause death, may nevertheless amount to murder pursuant to cl. (c) of s. 300 of the Penal Code; under the clause, all that is required is proof of an intention to inflict an injury that is sufficient in the ordinary course of nature to cause death.*

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CRIMINAL LAW: *Murder – Penal Code, s. 300 – Intention – Accused person hit deceased on head to silence her with no intention to cause death – Whether prosecution to prove intention to cause bodily injury sufficient in ordinary course of nature to cause death – Whether accused person had knowledge that death would be likely result – Whether injuries intentionally inflicted – Whether injuries sufficient in ordinary course of nature to cause death – Whether mens rea of murder under cl. (c) of s. 300 of Penal Code not to be coalesced with mens rea of murder under cl. (a) – Whether prosecution required to prove intention to cause death*

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Law Pow Ling ('deceased'), aged 75 years old, was staying in the one-bedroom sundry shop run by her son. On the fateful morning, when the deceased could not be reached, her sons broke open the entrance of the shop. The shop appeared to have been ransacked and the deceased was found lying motionless on the bed. The police investigation culminated in the arrest of the appellant. The appellant was charged with the murder. On the strength of the evidence led by the prosecution at the close of its case, the trial judge found that a *prima facie* case had been established against the appellant. Upon being called to state his defence, the appellant chose to give evidence on oath. He admitted hitting the deceased twice on the head with a baseball bat that was picked up from the shop but denied having any intention to kill her. He said his intention was only to rob her and that the reason why he hit her with the baseball bat was because she shouted for help upon seeing him in the shop. The appellant said he did not know that by hitting the deceased's head with the baseball bat, it would kill her. He went on to say that he hit the deceased's head on the spur of the moment and not intentionally. The trial judge rejected the appellant's defence that he had no intention to kill the deceased and found that the appellant's act of hitting the deceased on her head with the baseball bat was an act of murder under cl. (c) of s. 300 of the Penal

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Code ('PC'). Having been found guilty of the charge, the appellant was sentenced to death. His appeal to the Court of Appeal was dismissed and hence, this appeal.

Held (dismissing appeal; affirming conviction and sentence)
Per Abdul Rahman Sebli FCJ delivering the judgment of the court:

(1) It is irrelevant and totally unnecessary to enquire into what kind of injury the accused intended to inflict. The question is not whether the intention of the accused is to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. In the present case, the injuries that were proved to be present and which the appellant intended to inflict were the injuries on the deceased's head which fractured her skull. Where the prosecution relies on cl. (c) of s. 300 of the PC, it is not required to prove intention to cause bodily injury of a kind that is sufficient in the ordinary course of nature to cause death. In the context of the present case, proof of that intention was the appellant's deliberate act of hitting the deceased on her head with the baseball bat, which was totally unrelated to the question whether he intended to cause injury that was sufficient to cause death in the ordinary course of nature. (paras 46, 47 & 48)

(2) Even if the appellant had not intended to cause injury that was sufficient to cause the deceased's death in the ordinary course of nature, or had no knowledge that death would be the likely result, his act would still be murder under cl. (c) of s. 300 of the PC if otherwise his act of hitting the deceased's head with the baseball bat was intentional and not accidental, or that he intended to cause some other kind of injury. It follows that where the case falls under cl. (c) of s. 300 of the PC, there is no requirement for the prosecution to prove intention to cause death under cl. (a), or knowledge of the likelihood of death under cl. (b) or knowledge of the imminent danger of the act under cl. (d). What the prosecution needed to prove in order to bring the case under cl. (c) of s. 300 is to show that the injury proved to be present was caused intentionally and not accidentally and that the injury was sufficient in the ordinary course of nature to cause death. (paras 49 & 50)

(3) The 'intention' or the *mens rea* element of murder under cl. (c) of s. 300 of the PC must not be coalesced with the 'intention' or the *mens rea* element of murder under cl. (a). Under cl. (a), death is the intended consequence and death results as intended, whereas under cl. (c), death is not the intended consequence but death results, not because death is intended, but because the bodily injury intended to be inflicted is of a kind that is sufficient in the ordinary course of nature to cause death. It would thus appear that the appellant had misconstrued cl. (c) of s. 300. (paras 53 & 55)

(4) The appellant's defence was that his act of hitting the deceased's head with the baseball bat did not amount to murder as there was no intention to kill nor any knowledge that it was likely to cause death, even though his violent act resulted in the death of the deceased. However, the appellant's act, undoubtedly, was murder under cl. (c) of s. 300 of the PC, not because it was done with the intention of causing death, or with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, or with the knowledge that it was likely to cause death, or because it was so imminently dangerous that it must in all probability cause death, but because the injuries were intentionally inflicted and the injuries were sufficient in the ordinary course of nature to cause death. (paras 55 & 56)

Bahasa Melayu *Headnotes*

Law Pow Ling ('si mati'), berumur 75 tahun, tinggal di sebuah kedai dengan satu bilik tidur, yang dikendalikan anaknya. Pada pagi yang malang itu, apabila si mati tidak dapat dihubungi, anak-anak lelakinya memecahkan pintu masuk kedai tersebut. Kedai itu kelihatan telah digeledah dan si mati didapati terbaring kaku atas katil. Siasatan polis menjurus pada penangkapan perayu. Perayu dipertuduh dengan pembunuhan itu. Berdasarkan kekuatan keterangan yang dikemukakan pendakwaan, di akhir kes pendakwaan, hakim bicara mendapati kes *prima facie* terbukti terhadap perayu. Apabila dipanggil membela diri, perayu memilih untuk memberi keterangan bersumpah. Dia mengakui memukul si mati dua kali di kepala dengan kayu besbol yang diambilnya dari kedai itu tetapi menafikan mempunyai apa-apa niat untuk membunuhnya. Dia menyatakan bahawa niatnya hanya untuk merompak si mati dan sebab mengapa dia memukul si mati dengan kayu besbol adalah kerana si mati menjerit meminta tolong selepas melihat perayu di kedai itu. Perayu menyatakan bahawa dia tidak tahu bahawa memukul si mati di kepala dengan kayu besbol akan membunuhnya. Dia menyatakan bahawa dia memukul kepala si mati tanpa dirancang dan bukan dengan niat. Hakim bicara menolak pembelaan perayu bahawa dia tiada niat untuk membunuh si mati dan mendapati tindakan perayu memukul si mati di kepala dengan kayu besbol adalah tindakan membunuh bawah kl. (c) s. 300 Kanun Keseksaan ('Kanun'). Mendapati perayu bersalah atas pertuduhan tersebut, perayu dijatuhkan hukuman mati. Rayuannya ke Mahkamah Rayuan ditolak dan oleh itu, rayuan ini.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)
Oleh Abdul Rahman Sebli HMP menyampaikan penghakiman mahkamah:

(1) Tidak relevan dan tidak perlu disoal tentang jenis kecederaan yang tertuduh berniat untuk lakukan. Soalan bukanlah sama ada tertuduh berniat mengakibatkan kecederaan serius atau kecil tetapi sama ada dia meniatkan untuk mengakibatkan kecederaan yang terbukti wujud.

Dalam kes ini, kecederaan-kecederaan terbukti wujud dan yang diniatkan perayu adalah kecederaan-kecederaan pada kepala si mati yang menyebabkan keretakan pada tengkoraknya. Apabila pihak pendakwaan bersandar pada kl. (c) s. 300 Kanun, tidak perlu pembuktian niat untuk mengakibatkan kecederaan diri yang mencukupi dalam perjalanan biasa mengakibatkan kematian. Dalam konteks kes ini, bukti niat adalah tindakan sengaja perayu memukul si mati di kepalanya dengan kayu besbol, yang tidak berkait langsung dengan soalan sama ada dia berniat mengakibatkan kecederaan yang mencukupi untuk mengakibatkan kematian dalam perjalanan biasa.

(2) Walaupun perayu tidak berniat mengakibatkan kecederaan yang mencukupi untuk menyebabkan kematian si mati dalam perjalanan biasa, atau tiada pengetahuan bahawa kematian adalah akibat yang mungkin berlaku, tindakannya masih membentuk pembunuhan bawah kl. (c) s. 300 Kanun jika sebaliknya tindakan perayu memukul kepala si mati dengan kayu besbol dengan niat dan bukan tidak sengaja, atau dia meniatkan untuk mengakibatkan apa-apa kecederaan. Berikutan itu, apabila kes tersebut terangkum bawah kl. (c) s. 300 Kanun, tiada keperluan untuk pihak pendakwaan membuktikan niat untuk mengakibatkan kematian bawah kl. (a), atau pengetahuan tentang kemungkinan kematian bawah kl. (b) atau pengetahuan tentang bahaya nyata tindakan tersebut bawah kl. (d). Apa yang perlu dibuktikan pihak pendakwaan untuk membawa kes itu bawah kl. (c) s. 300 adalah menunjukkan bahawa kecederaan yang dibuktikan wujud diakibatkan dengan niat dan bukan tidak sengaja dan kecederaan itu mencukupi dalam perjalanan biasa untuk mengakibatkan kematian.

(3) Elemen 'niat' atau *mens rea* untuk membunuh bawah kl. (c) s. 300 Kanun tidak semestinya digabungkan dengan elemen 'niat' atau *mens rea* untuk membunuh bawah kl. (a). Bawah kl. (c), kematian bukan akibat yang diniatkan tetapi kematian berlaku, bukan kerana kematian diniatkan tetapi kerana kecederaan badan yang diniatkan adalah jenis yang mencukupi dalam perjalanan biasa untuk mengakibatkan kematian. Oleh itu, jelas bahawa perayu tersalah tafsir kl. (c) s. 300 Kanun.

(4) Pembelaan perayu adalah tindakan memukul kepala si mati dengan kayu besbol tidak membentuk membunuh kerana tiada niat untuk membunuh atau apa-apa pengetahuan bahawa itu kemungkinan akan mengakibatkan kematian, walaupun tindakan ganasnya mengakibatkan kematian si mati. Walau bagaimanapun, tindakan perayu, tanpa ragu-ragu, adalah membunuh bawah kl. (c) s. 300 Kanun, bukan kerana itu dilakukan dengan niat mengakibatkan kematian, atau dengan niat hendak mengakibatkan kecederaan badan yang mencukupi dalam perjalanan biasa untuk mengakibatkan kematian, atau dengan pengetahuan bahawa

A itu kemungkinan akan mengakibatkan kematian, atau kerana itu nyata berbahaya sehingga itu berkemungkinan besar mengakibatkan kematian, dan bukan kerana kecederaan diniatkan untuk diakibatkan dan kecederaan-kecederaan tersebut mencukupi dalam perjalanan biasa untuk mengakibatkan kematian.

B **Case(s) referred to:**
Mohamed Yasin Hussin v. PP [1976] 1 LNS 75 PC ***(refd)***
Mohd Asmadi Yusof v. PP [2011] 1 CLJ 41 FC ***(refd)***
Mohd Azam Raja Abdullah v. PP [2015] 1 CLJ 1080 CA ***(refd)***
Murugan Arumugam lwn. PP [2017] 3 CLJ 377 FC ***(refd)***
C *PP v. Lim Poh Lye & Another [2005] SGCA 31* ***(refd)***
PP v. Visuvanathan [1977-1978] SLR (R) 27 ***(refd)***
Rajwant Singh v. State of Kerala AIR 1966 SC 1874 ***(refd)***
Rusman Sulaiman v. PP [2013] 4 CLJ 305 FC ***(refd)***
Tan Chew Bock v. PP [1991] 2 SLR (R) 608 ***(refd)***
Tan Chee Hwee v. PP [1993] 2 SLR (R) 493 ***(refd)***
D *Tan Joo Cheng v. PP [1992] SGCA 12* ***(refd)***
Tham Kai Yau & Ors v. PP [1976] 1 LNS 159 FC ***(refd)***
Virsa Singh v. State of Punjab AIR (45) 1958 SC 465 ***(refd)***
Wang Wenfeng v. Public Prosecutor [2012] SGCA 47 ***(refd)***

Legislation referred to:
E Penal Code, s. 300(a), (b), (c), (d)

Penal Code [Sing], s. 300(c)
The Indian Penal Code [Ind], s. 300(c)

For the appellant - Vijaya Sandran Tangavelu & Kirtahana Darshayinie Vijaya Sandran; M/s Vijaya Sandran & Assocs
F *For the respondent - Aslinda Ahad & Nahra Dollah; DPPs*

[Editor's note: For the High Court judgment, please see PP lwn. Zulkiple Mohamad [2016] 1 LNS 920 (affirmed).]

Reported by S Barathi

G **JUDGMENT**

Abdul Rahman Sebli FCJ:

[1] In the High Court at Muar, Johor, the appellant was charged with the murder of 75-year old Law Pow Ling and the charge against him was as follows:
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> Bahawa kamu pada 22.11.2013 jam di antara 12.01 pagi hingga 8.30 pagi bertempat di Syarikat Perniagaan Choong, No 101, Jalan Jelawat, Taman Banang di dalam Daerah Batu Pahat, dalam Negeri Johor Darul Ta'zim, telah melakukan kesalahan bunuh hingga menyebabkan kematian Law Pow Ling (No KP:390319-01-5252) dan oleh yang demikian kamu telah
I melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] He claimed trial to the charge at the conclusion of which he was found guilty and sentenced to death. His appeal to the Court of Appeal was dismissed, hence the appeal before us. Having heard arguments by the parties on 17 November 2021, we dismissed the appeal and these are our grounds.

[3] The facts may be summarised as follows. Chong Yong Lieng (SP3) is the son of the deceased, Law Pow Ling. He runs a sundry shop selling household goods at No. 101, Jalan Jelawat, Batu Pahat, Johor. The shop has one bedroom. SP3 does not stay at the shop but his late mother (the deceased) did and she stayed there alone. SP3's daily routine was to close the shop at 10.30pm and return to his house located about 1.5 kilometers away from the shop. Before going home, SP3 would make sure that the deceased had gone to bed. He would then lock the front and back doors of the shop from the outside.

[4] Every morning, SP3's uncle, one Yeo Chung Kin would come over to the shop to bring the deceased to his restaurant to cook. However, in the morning of 22 November 2013, Yeo Chung Kin could not reach out to the deceased, so he called SP3 by phone and asked SP3 to check on her.

[5] At about 8am on the same date, SP3's elder brother, Chong Ying Kong (SP4) came over to the shop. His intention was to bring the deceased out for breakfast. SP4 knocked on the back door of the shop and at the same time calling out for the deceased for about 30 minutes but there was no response. SP4 then called SP3.

[6] SP3 arrived at the shop slightly after 8.00 am. He found the two front doors closed. He tried to open the grille but could not as it was locked from inside. SP3 and SP4 knocked on the door and called for the deceased but there was no response. SP3 and SP4 then decided to break the iron door using a hammer. They then entered the shop.

[7] The shop was in a mess. It appeared to have been ransacked. The drawer had been opened and the files inside the drawer were scattered all over the floor. The cupboard behind the counter had also been opened and things inside the cupboard had fallen to the floor. As SP4 was inspecting the shop, he realised that seven RM1 coins that he had given to SP3 as presents were missing. The lights inside the shop and in the deceased's bedroom were still switched on.

[8] Just outside the door to the deceased's bedroom, SP4 saw a knife (P11A(1)) and a baseball bat (P10A) which had bloodstains on it. The knife and the baseball bat were items that belonged to the shop.

[9] SP3 and SP4 then entered the deceased's bedroom. There they saw their late mother lying motionless on the bed with her legs dangling down and touching the floor. There were traces of blood on the mattress and on the deceased's head. SP3 and SP4 tried to wake the deceased up by shaking her body but there was no reaction from the deceased.

[10] When SP3 went out of the bedroom, he saw a hole measuring about 2 x 4 feet at the ceiling of the shop. Apparently the perpetrator of this hideous crime had entered the shop through the ceiling after removing the roof tiles. SP3 then called the Batu Pahat Police Station. The police swung into action and their investigation culminated in the arrest of the appellant on 22 January 2014 for the murder of the deceased.

[11] On the strength of the evidence led by the prosecution at the close of its case, the learned trial judge found, correctly in our view, that a *prima facie* case had been established against the appellant. The evidence that placed the appellant squarely at the scene of crime came from his own brother Bahtera bin Mohamad (SP6) who testified that the torchlight (P6), which belonged to the shop, was given to him by the appellant after the incident. As for the 'Body Glove' bag (P5), the seven RM1 coins (P7) and the nail cutter (P8), they were all seized from SP6's house by the police in the course of their investigation into the murder. These items had been positively identified by SP3 (P5, P6, P7) and SP4 (P8) as items taken out from the shop.

[12] When called upon to state his defence, the appellant chose to give evidence on oath. He admitted hitting the deceased twice on the head with a baseball bat that he said he picked up from the shop, but denied having any intention to kill her. He said his intention was only to rob her and that the reason why he hit her with the baseball bat was because she shouted for help upon seeing him in the shop. He said he did not know that by hitting the deceased's head with the baseball bat, it would kill her. He went on to say that he hit the deceased's head on the spur of the moment and not intentionally. In cross-examination, he admitted keeping P6, P7 and P8 at his brother's (SP6) house after the incident.

[13] The learned trial judge rejected the appellant's defence that he had no intention to kill the deceased. His Lordship found that the appellant's act of hitting the deceased's head with the baseball bat was an act of murder under cl. (c) of s. 300 of the Penal Code, which reads as follows:

> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

[14] The legislative intent behind this clause is made clear by illustration (c) to the section, which reads:

> (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, **although he may not have intended to cause Z's death.** (emphasis added)

[15] Whether the injury is sufficient in the ordinary course of nature to cause death is essentially a question of fact for the court to determine. Since however this is a matter that is in the realm of medical science, medical evidence is needed to assist the court in arriving at a decision. Obviously, it is not for any layperson without the proper medical training and background to determine as a matter of scientific fact whether a particular injury is sufficient in the ordinary course of nature to cause death.

[16] In the present case, the prosecution called the forensic pathologist Dr. Mohamad Aznool Haidy bin Haji Ahsorori (SP13) to establish the nature of the injuries sustained by the deceased and the cause of her death. In the autopsy that SP13 performed on the deceased, he found a total of 21 injuries inflicted on her but only three were fatal, which were the injuries to the head. He described the head injuries as follows:

(i) A tramline-like bruise 12x1.5cm surrounded with wide bruise 12x4cm on the left temple of the head. There were underlying scalp haematoma, skull fracture and subarachnoid haemorrhage;

(ii) Laceration 4x1cm on the upper front aspect of the head. There were underlying scalp haematoma and skull fracture;

(iii) Bruise 13x8cm on the right temple of the head. There were underlying scalp haematoma, skull fracture and subarachnoid haemorrhage.

[17] SP13's internal examination of the head shows as follows:

Scalp:	Multiple scalp haematomas and laceration underlying the injuries as mentioned above (wounds no. 1, 2 and 3).
Skull:	Multiple skull bones fractures (both temporal bones and anterior cranial fossa) underlying the injuries as mentioned above (wounds no. 1, 2 and 3).
Meninges:	Multiple subarachnoid haemorrhages on both hemispheres of the brain (highly likely as a result of the wounds no. 1, 2 and 3).
Brain:	The brain weighed 1135gm. The brain parenchymal appeared pale and oedematous. Cerebellar 'conning' seen. However, no abscess, blood clot or tumour-like lesion in the brain.

[18] SP13 also carried out vaginal examination on the deceased and found the following injuries:

(i) Bruise 0.5x05cm on the 9 o'clock position of the vaginal opening;

(ii) Bruise 1x0.5cm on the 3 o'clock position of the vaginal opening;

(iii) Laceration 2x1cm on the 6 o'clock position of the vaginal opening (underlying mucosal redness).

[19] In his post-mortem examination report under the heading "Summary And Conclusions", this is what SP13 reported:

1. The body was that of an adult Chinese lady who was identified positively by the deceased's son as the above-mentioned name.
2. There was NO significant natural disease found on her body that could have caused or contributed directly to her death at that particular time.
3. There were injuries in keeping with features of blunt trauma.
   In my opinion, these injuries were consistent with pattern of being hit with blunt hard object such as wood, iron bar or whichever object with similar pattern. Those injuries could have caused direct and almost immediate fatality. The impact caused skull fracture, brain haemorrhage and oedema which could have led 'cerebellar conning' (depression to the cardio-respiratory centre).
4. There were vaginal injuries seen (bruises and laceration).
   In my opinion, these injuries were in keeping pattern with a cylindrical blunt-like object penetrating the hollow vaginal opening such as penile or whichever object with similar pattern. The presence of vital reaction (bruises & laceration with redness mucosa) could indicate evidence of perimortem in nature (just before death).
5. There were bruises on the hands and few areas of bruises on the torso & limbs.
   In my opinion, those injuries were consistent with that inflicted during struggle or defensive.
6. In my opinion, those injuries sustained were NOT in keeping with pattern of self-infliction NOR of mere fall.
7. There were multiple injuries on the both lower limbs.
   In my opinion, those injuries sustained were inflicted in a surprised or an overpowered event.
8. The findings of the postmortem examination were consistent with that of Multiple Blunt Trauma to the Head.
   In my opinion, the patterns were in keeping with homicide.
   In my opinion, the cause of death was:
   Multiple Blunt Trauma to the Head.

[20] The crucial part of SP13's evidence was that the injuries on the deceased's head could cause direct or almost immediate fatality, ie, death ("Kecederaan-kecederaan tersebut boleh secara terus atau sehampir secepat menyebabkan kematian"). He testified that the deceased would not be able to survive the injuries.

[21] This effectively means that the injuries were of a kind that is "sufficient in the ordinary course of nature to cause death" within the meaning of cl. (c) of s. 300 of the Penal Code although SP13 did not describe the injuries in those exact terms either in his post-mortem examination report

or in his oral evidence in court. At the trial, SP13 was shown the baseball bat (P10A) that the police seized from the scene of crime and he confirmed that it could cause injuries 1, 2 and 3 found on the deceased's head.

[22] There was no challenge at all during the cross-examination of SP13 that the deceased's death was due to multiple blunt trauma to the head and that the injuries were consistent with being hit with a blunt and hard object such as wood, iron bar or whatever object with similar pattern, including the baseball bat (P10A).

[23] Nor was there any challenge to SP13's testimony that the head injuries could cause direct or almost immediate death. There was an attempt in cross-examination to show "a great possibility" that the minor cracks in the deceased's skull would open up caused by the electric saw that SP13 used to cut open the skull.

[24] The suggestion was denied by SP13. He said there has never been such a case. With due respect, the point raised was a point of no significance because even if it is true that the opening up of the cracks was caused by the electric saw that SP13 used to cut open the skull, the fact remains that it was the appellant who caused the fractures on the deceased's skull.

[25] SP13's finding at para. 4 of his post-mortem examination report shows that the appellant raped the deceased even as she was in pain and dying from her head injuries. This is corroborated by the evidence of Aedrianee Reeza bin Alwi (SP11), a science officer with the Johor Chemistry Department who confirmed that the DNA of the spermatozoa found on the bedsheet and bloodstain and spermatozoa found on the deceased's panties matched the DNA (P28 and P29) of the appellant. This is irrefutable evidence, *albeit* circumstantial, not only of the appellant's presence at the scene of crime but also of his culpability for the death of the deceased.

[26] SP13's findings at paras. 5, 6 and 7 of the post-mortem examination report further show that the deceased had put up a struggle before she was overpowered and fatally injured and raped by the appellant.

[27] The *locus classicus* on cl. (c) of s. 300 of the Penal Code is the Indian Supreme Court case of *Virsa Singh v. State of Punjab* AIR (45) 1958 SC 465; (1958) 1 MLJ (Crl) 579 which has long been accepted as part of our law: See for example *Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174 FC; *Mohd Asmadi Yusof v. PP* [2011] 1 CLJ 41; [2011] 2 MLJ 302 FC; *Murugan Arumugam lwn. PP* [2017] 3 CLJ 377; [2014] MLJU 1886 FC; *Rusman Sulaiman v. PP* [2013] 4 CLJ 305; [2018] Supp MLJ 194 FC; *Mohd Azam Raja Abdullah v. PP* [2015] 1 CLJ 1080 CA.

[28] The elements that the prosecution needs to prove in order to establish a case under cl. (3) of s. 300 of the Indian Penal Code, which corresponds with cl. (c) of s. 300 of our Penal Code, were spelt out by Vivian Bose J in *Virsa Singh* and they are as follows:

A (i) it must be established that a bodily injury is present;

(ii) the nature of the injury must be proved;

(iii) it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and

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(iv) it must be proved that the injury of the type described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature.

C **[29]** *Virsa Singh* was followed by the Privy Council in *Mohamed Yasin Hussin v. PP* [1976] 1 LNS 75; [1976] 1 MLJ 156, a case that emanated from the decision of the Court of Appeal of Singapore which affirmed the decision of the High Court to convict the appellant of murder under cl. (c) of s. 300 of the Singapore Penal Code, which is in *pari materia* with cl. (c) of s. 300 of our Penal Code. In that case, Lord Diplock delivering the judgment of the

D Privy Council *inter alia* held as follows:

> … Not only must the act of the accused which caused the death be voluntary in this sense; the prosecution must also prove that the accused **intended, by doing it, to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death.**
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> E (emphasis added)

[30] In *Tan Chew Bock v. Public Prosecutor* [1991] 2 SLR (R) 608 however, the Court of Appeal of Singapore, which is the apex court in the Republic, did not quite agree with this part of Lord Diplock's pronouncement, agreeing instead with the opinion of the Singapore High Court in *PP v. Visuvanathan*

F [1977-1978] SLR (R) 27 that it was "not of universal application". We reproduce below what Yong Pung How CJ said at p. 618:

> 30 *Mohamed Yassin*'s case was discussed in *PP v. Visuvanathan* [1977-1978] SLR (R) 27. In *Visuvanathan*'s case, the trial judges were of the opinion that the *dictum* of Lord Diplock relied upon was *factually appropriate in*
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> G *Mohamed Yassin's case but it was not of universal application.* The trial judges in *Visuvanathan*'s case expressed the view that all the Prosecution needed to prove was that where the appellant intentionally (and not accidentally) inflicted a bodily injury sufficient in the ordinary course of nature to cause death, cl. (c) would apply. Under cl. (c), once that intention to cause bodily injury was actually found to be proved, the rest of the enquiry ceased to
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> H be subjective and became purely objective, and the only question was: whether the injury was sufficient in the ordinary course of nature to cause death. *"It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental."*
>
> (emphasis added)

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[31] The learned Chief Justice went on to say at p. 619: A

> 32 In our opinion, the law is not in doubt. *Virsa Singh*'s case ([28] *supra*) is clear on s. 300(c). V Bose J delivering the judgment of the Supreme Court said, at 467:
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> > In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on the broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. *It is, of course, not necessary to enquire into every last detail as, for example, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or kidney or bowels, he cannot be said to have intended to injure them.* Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand. B C D
>
> > To put it shortly, the prosecution must prove the following facts before it can bring a case under s. 300 'thirdly';
> >
> > First, it must establish, quite objectively, that a bodily injury is present. E
> >
> > Secondly, the nature of the injury must be proved. These are purely objective investigations.
> >
> > Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. F
> >
> > Once these three elements are proved to be present, the enquiry proceeds further and, fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. *This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.* (emphasis added) G

[32] Before concluding his judgment, the learned Chief Justice adopted the following passages in *Visuvanathan*:

> In our judgment for the application of cl. (c) of s. 300 of the Penal Code, all that the Prosecution need to prove is: H
>
> (a) that the accused did an act which caused the death of the deceased:
>
> (b) that the said act was done with the intention of causing bodily injury;
>
> (c) that the injury caused: I

A (i) was intended and was not accidental or otherwise unintentional; and

(ii) was sufficient in the ordinary course of nature to cause death.

There is no other requirement. In our opinion the submission of counsel for the Defence based on Lord Diplock's *dictum* that 'the prosecution must B also prove that the accused intended to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death' was **untenable because such a requirement would make cl. (c) otiose in view of the provisions of cl. (a).**

(emphasis added)

C **[33]** In *Tan Joo Cheng v. PP* [1992] SGCA 12, *Visuvanathan* was also referred to by the same court where S Rajendran J who delivered the judgment of the Court of Appeal made the following observations:

17 The decision in *Virsa Singh* has been accepted in a number of local cases. *PP v. Visuvanathan* [1977-1978] SLR (R) 27 was one such case. A D submission similar to that made here was made to the trial judges in that case, namely *that there was no evidence that the accused inflicted the fatal injury with the intention of causing such bodily injury as would in the ordinary course of nature to cause death.* In rejecting this submission, the trial judges, Choor Singh and Rajah JJ, said (at [6]):

E … The cases show that cl. (c) [of s 300] is meant to apply in circumstances where the assailant had *no intention of causing death* but has nevertheless intentionally (and not accidental) inflicted a bodily injury sufficient in the ordinary course of nature to cause death. Under cl. (c) once *the intention to cause the bodily injury actually found to be present* is proved, the rest of the inquiry ceases to be F subjective and becomes purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. *It is irrelevant and totally unnecessary to enquire what kind of injury the accused intended to inflict. The crucial question always is, was the injury found to be present intended or accidental …*

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18 The Prosecution does not under cl. (c) of s. 300 have to establish that the accused intended to cause an injury at a vital spot or injury of a type that would be sufficient in the ordinary course of nature to cause death. It is sufficient for the Prosecution to establish that the accused intended to cause the injury actually found on the deceased, and as a separate item H it must be established that that injury found on the accused [*sic*] was an injury that was sufficient in the ordinary course of nature to cause death. *Even if an accused intended to inflict only a relatively minor injury, if the injury that he in fact inflicted pursuant to that intention was an injury sufficient in the ordinary course of nature to cause death, the provisions of cl. (c) of s. 300 would be attracted.* As Bose J put it in *Virsa Singh v. State of Punjab*:

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> No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; *and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.* (emphasis added)

[34] In another Singapore Court of Appeal decision, it was held in *Wang Wenfeng v. PP* [2012] SGCA 47 that if the bodily injury intentionally inflicted was sufficient in the ordinary course of nature to cause death, s. 300(c) murder would have been committed "as a matter of course". Chan Sek Keong CJ speaking for the court also touched on the issue of "sufficiency" at p. 602:

> 33."Sufficiency" in this context refers to the high probability of death in the ordinary course of nature (*Rajwant Singh v. State of Kerala* AIR 1966 SC 1874 at 1879). The test of whether a bodily injury is sufficient in the ordinary course of nature to cause death is objective – it is not necessary for the accused to have known or intended the potentially fatal consequence of inflicting the bodily injury. It is sufficient that the accused intentionally caused the particular bodily injury inflicted (*Tan Chee Wee* at [42]-[43]). Hence, a fatal act accidentally caused is a defence to a charge of s. 300(c) murder.

[35] In *Tan Joo Cheng*, counsel for the appellant relying on *Virsa Singh* argued that if the prosecution wanted to rely on cl. (c) of s. 300, they would have to prove that the appellant intended to strike at a vital or dangerous spot of the body. It was submitted that the intention of the appellant in accosting the deceased was only to rob him and not to cause any injury, much less an injury at a vital spot such as the neck which was sufficient in the ordinary course of nature to cause death.

[36] In rejecting the argument, the Court of Appeal pointed out that such approach was in fact specifically rejected in *Virsa Singh* where Vivian Bose J said at p. 468 of the judgment:

> *The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present.* If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. *Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question;* and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law.

A *Whether the wound is serious or otherwise, and if serious, how serious, is totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.* (emphasis added)

[37] The principle in *Virsa Singh* was reiterated in *PP v. Lim Poh Lye & Another* [2005] SGCA 31 where the Singapore Court of Appeal explained its B decision 12 years earlier in *Tan Chee Hwee v. PP* [1993] 2 SLR (R) 493 which appeared to have added a new element to the interpretation of s. 300(c). Suffice it if we refer to headnotes (3) and (4) of *Lim Poh Lye*:

(3) In *Tan Chee Hwee v. PP* [1993] 2 SLR(R) 493, the Court of Appeal overturned the finding that the two accused were guilty of murder C because, in its view, there was no intention on the part of the two accused to strangle the maid, and the resulting fatal neck injury in all probability, was not intentionally but accidentally or unintentionally caused. The Court did not add any new element to the interpretation of s. 300(c). It also did not distinguish between the injury caused and the means by which the injury was caused: at [29], [32] and [34].

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(4) In contrast, the trial judge did specifically find in the present case that Lim (and indeed Ng too) intended to stab Bock and in particular, cause stab wounds to his leg or thigh. It was accepted that Lim (and Ng) did not know that there was a main artery running through the leg and that the bleeding, if unattended to, would, in the normal course of nature, E cause death. However, under the *Virsa Singh* principle, it was never a requirement that the accused had to realise the full gravity of his act: at [37].

[38] In *Ratanlal & Dhirajlal's Law of Crimes A commentary on The Indian Penal Code*, 1860, 26th edn, the learned authors reproduced the following passage F in the judgment of the Supreme Court in *Rajwant Singh v. State of Kerala* AIR 1966 SC 1874 at p. 1398:

The third clause discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course G of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. *If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature, the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not.*

(emphasis added)

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[39] In the Malaysian case of *Tham Kai Yau & Ors* (*supra*) Raja Azlan Shah FJ (as his late Royal Highness then was) delivering the judgment of the Federal Court explained the distinction between culpable homicide and murder at p. 176:

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> Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. Illustration (d) of section 300, Penal Code is a case of this description. Where the offender knows that the particular person injured is likely, either from peculiarity of constitution, immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death, it is murder. Illustration (b) of section 300, Penal Code is a good example. The essence of (b) and (3) is this. It is culpable homicide if the bodily injury intended to be inflicted is likely to cause death; **it is murder, if such injury is sufficient in the ordinary course of nature to cause death. Illustration (c) given in section 300, Penal Code is an example.** It is on a comparison of these two limbs of section 299 and section 300 that the decision of doubtful cases as the present must generally depend. The distinction is fine, but noticeable. In the last analysis, it is a question of degree of probability. (emphasis added)

[40] We are mindful that the injuries inflicted on the deceased in *Virsa Singh, Tan Chew Bock* and *Tan Joo Cheng* were injuries of a very serious nature, thus raising the question whether cl. (c) of s. 300 applies in cases where the injuries inflicted were of a minor nature.

[41] In *Virsa Singh*, the spear injury inflicted on the deceased was thrust with such force that it penetrated the bowels and three coils of his intestines came out of the wound, and digested food oozed out from cuts in three places. The doctor who conducted the post-mortem on the deceased testified that the injury was sufficient in the ordinary course of nature to cause death. The Supreme Court affirmed the decision of the High Court that the offence committed by the appellant was murder under s. 300 'thirdly' of the Indian Penal Code.

[42] In *Tan Chew Bock* the murder weapon, which was a kitchen knife measuring 14cm long, had gone through the deceased's mouth and stuck there with only the handle remaining outside. The tip of the knife had lodged quite firmly on the back of the skull in the bone, and the cutting edge of the knife had cut into the bone on the left side of the foramen magnum and was wedged in the foramen magnum. So great was the force used that the knife could not be removed from her mouth. According to the senior forensic pathologist, Professor Chao Tze Cheng, death would have occurred in a matter of minutes. The Court of Appeal affirmed the trial court's finding that the appellant's act was an act of murder under cl. (c) of s. 300 of the Singapore Penal Code.

[43] In *Tan Joo Cheng*, the deceased was stabbed with a knife at the base of his neck to a depth of 5 to 6cm. The pathologist who performed the post-mortem on the deceased testified that the wound was sufficient in the ordinary course of nature to cause death. Likewise it was held that the appellant's act was an act of murder under cl. (c) of s. 300 of the Singapore Penal Code.

[44] Given the line of authorities on cl. (c) of s. 300 of the Penal Code, we do not think the seriousness of the injuries such as those found in *Virsa Singh, Tan Chew Bock* and *Tan Joo Cheng* can be used as a distinguishing factor to argue that cl. (c) of s. 300 would only be attracted where the injuries intended to be inflicted were serious injuries as opposed to minor injuries.

[45] If only a minor injury is inflicted but death results, the situation may possibly be covered by cl. (b) of s. 300 of the Penal Code in relation to which illustration (b) is relevant, which reads:

> (b) A, knowing that Z is labouring under such disease that a blow is likely to cause death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

[46] The law is now settled that it is irrelevant and totally unnecessary to enquire into what kind of injury the accused intended to inflict. As Vivian Bose J said in *Virsa Singh*, the question is not whether the accused's intention is to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. In the present case, the injuries that were proved to be present and which the appellant intended to inflict were the injuries on the deceased's head which fractured her skull.

[47] It is clear therefore that where the prosecution relies on cl. (c) of s. 300 of the Penal Code, it is not required to prove intention to cause bodily injury of a kind that is sufficient in the ordinary course of nature to cause death. All that is required is proof of intention to inflict the injury that is proved to be present, irrespective of whether the injury is grievous or trivial.

[48] In the context of the present case, proof of that intention is the appellant's deliberate act of hitting the deceased's head with the baseball bat, which is totally unrelated to the question whether he intended to cause injury that is sufficient to cause death in the ordinary course of nature.

[49] In other words, even if the appellant had not intended to cause injury that is sufficient to cause the deceased's death in the ordinary course of nature, or had no knowledge that death would be the likely result, his act would still be murder under cl. (c) of s. 300 of the Penal Code if otherwise his act of hitting the deceased's head with the baseball bat was intentional and not accidental, or that he intended to cause some other kind of injury.

[50] It follows that where the case falls under cl. (c) of s. 300 of the Penal Code, there is no requirement for the prosecution to prove intention to cause death under cl. (a), or knowledge of the likelihood of death under cl. (b) or knowledge of the imminent danger of the act under cl. (d). What the prosecution needs to prove in order to bring the case under cl. (c) of s. 300 is to show that the injury proved to be present was caused intentionally and not accidentally and that the injury was sufficient in the ordinary course of nature to cause death.

[51] We need to come back to *Virsa Singh* to hopefully clear the point beyond controversy. In that case, counsel for the appellant had in fact argued that the 'intention' that cl. (c) of the Indian Penal Code requires must be related not only to the bodily injury inflicted but also to the clause "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". The Supreme Court disagreed and the reason for its disagreement was this:

> This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the thirdly would be unnecessary because the act would fall under the first part of the section, namely:
>
> > If the act by which the death is caused is done with the intention of causing death.

[52] This exposition by the Supreme Court dispels any notion that under cl. (c) of s. 300 of the Penal Code, the prosecution is required to prove that the bodily injury intended to be inflicted was intended to cause death in the ordinary course of nature. The only requirement under cl. (c) is for the prosecution to prove that the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

[53] The 'intention' or the *mens rea* element of murder under cl. (c) of s. 300 of the Penal Code must not be coalesced with the 'intention' or the *mens rea* element of murder under cl. (a). Under cl. (a), death is the intended consequence and death results as intended, whereas under cl. (c), death is not the intended consequence but death results, not because death is intended but because the bodily injury intended to be inflicted is of a kind that is sufficient in the ordinary course of nature to cause death.

[54] It is one thing to intend bodily injury and quite another to intend bodily injury that is sufficient in the ordinary course of nature to cause death. The former falls under cl. (c), the latter under cl. (a).

[55] It would thus appear that the appellant has misconstrued cl. (c) of s. 300 of the Penal Code. To recapitulate, his defence was that although his act of hitting the deceased's head with the baseball bat was intentional, he

had no intention to kill her. He said he did not even know that his act was likely to cause death. In other words, what the appellant was saying was that his act of hitting the deceased's head with the baseball bat did not amount to murder as there was no intention to kill nor any knowledge that it was likely to cause death, even though his violent act resulted in the death of the deceased.

[56] On our part, we have no doubt that the appellant's act was murder under cl. (c) of s. 300 of the Penal Code, not because it was done with the intention of causing death, or with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death, or with the knowledge that it was likely to cause death, or because it was so imminently dangerous that it must in all probability cause death, but because the injuries were intentionally inflicted and the injuries were sufficient in the ordinary course of nature to cause death.

[57] In the final analysis and having regard to the law and the evidence before the court, we found no reason to interfere with the concurrent findings of fact by the courts below that the appellant's act of hitting the deceased's head with the baseball bat was intentional and that the injuries were sufficient in the ordinary course of nature to cause death, hence our unanimous decision to dismiss the appeal and affirm the conviction and sentence.